



**BANGKO SENTRAL NG PILIPINAS**

OFFICE OF THE GOVERNOR

**CIRCULAR NO. 858**

Series of 2014

**Subject: Amendments to Relevant Provisions of the Manual of Regulations for Banks Implementing Republic Act No. 10641**

Pursuant to Monetary Board Resolution No. 1794 dated 6 November 2014 providing for the rules and regulations to implement Republic Act No. 10641 (An Act Allowing the Full Entry of Foreign Banks in the Philippines, Amending for the Purpose Republic Act No. 7721), the following provisions of the Manual of Regulations for Banks (MORB) are hereby amended:

**Section 1.** Section X105 and its subsections of the MORB on the liberalized entry and scope of operations of foreign banks is hereby amended to read, as follows:

**"Sec. X105. (2008 - X121) Liberalized Entry and Scope of Operations of Foreign Banks.** The following rules shall govern the liberalized entry and scope of operations of foreign banks."

**"§ X105.1 (2008 - X121.1) Modes of entry of foreign banks.** With prior approval of the Monetary Board, foreign banks may operate in the Philippines through any one (1) of the following modes of entry:

- a. By acquiring, purchasing or owning up to one hundred percent (100%) of the voting stock of an existing domestic bank (including banks under receivership or liquidation, provided no final court liquidation order has been issued);
- b. By investing in up to one hundred percent (100%) of the voting stock of a new banking subsidiary incorporated under the laws of the Philippines;
- c. By establishing a branch and sub-branches with full banking authority.

Interested foreign banks shall file with the Office of the Governor, Bangko Sentral, their application for authority to operate in the Philippines through any of the modes of entry mentioned above. The application requirements are listed in *Appendix 2.*"

**"§ X105.2 (2008 - X121.2) Qualification requirements.** A foreign bank seeking to operate in the Philippines through any of the modes of entry provided under Items "a" to "c" of Subsec. X105.1 must, in addition to satisfying the criteria prescribed under Subsec. X105.3, be -

(1) Widely-owned and publicly-listed in the country of origin, unless the foreign bank applicant is owned and controlled by the government of its country of origin.

(2) Established, reputable and financially sound.

The determination of whether a foreign bank applicant is widely-owned and publicly listed, established, reputable, and financially sound shall be based on the information derived from submitted documents as required under *Appendix 2*. Further, if the foreign bank is owned/controlled by a holding company, this requirement may apply to the holding company.”

**“§ X105.3 (2008 - X121.3) Guidelines for selection.** The following factors shall be considered in selecting the foreign banks which will be allowed to enter the Philippine banking system through R.A. No. 7721, as amended by R.A. No. 10641:

a. *Geographic representation and complementation.* Representation from the different parts of the world and/or the international financial centers shall be ensured.

b. *Strategic trade and investment relationships between the Philippines and the home country of the foreign bank.* Consideration shall be given to the countries of origin of applicant foreign banks –

(1) With substantial financial assistance to, and loans and investments, past and present, in the Philippines; and

(2) With which the Philippines has significant volume of trade especially to those with which the country has substantial net exports.

c. *Relationship between the applicant bank and the Philippines.* Consideration shall be given to the capability of the foreign bank to promote trade with, and to bring foreign investments into, the Philippines. Long standing financial and commercial relationship with, and assistance extended to, the Philippines, shall likewise be taken into account.

d. *Demonstrated capacity, global reputation for financial innovations and stability in a competitive environment of the applicant bank.*

e. *Reciprocity rights enjoyed by Philippine banks in the applicant’s country.* Subject to the host country’s rules and regulations of general application, Philippine banks should have the opportunity to establish operations in the foreign bank applicant’s home country.

f. *Willingness to fully share banking technology.”*

**“§X105.4 (2008 - X121.4) Capital requirements of foreign banks.**

a. *For locally incorporated subsidiaries.*

A foreign bank subsidiary shall comply with the minimum capital and prudential capital ratios applicable to domestic banks of the same category as prescribed under prevailing regulations.

b. *For foreign bank branches*

(1) A foreign bank branch shall comply with the minimum capital and prudential capital ratios applicable to domestic banks of the same category as prescribed under prevailing regulations.

(2) For purposes of compliance with minimum capital regulations, the term "capital of a foreign bank branch" shall refer to the sum of: (i) permanently assigned capital, (ii) undivided profits, and (iii) accumulated net earnings, which is composed of unremitted profits not yet cleared by the Bangko Sentral for outward remittance and losses in operations, less capital adjustments as may be required by the Bangko Sentral in accordance with prevailing rules and regulations of general application.

(3) Permanently assigned capital shall be inwardly remitted and converted into Philippine currency at the exchange rate prevailing at the time of remittance.

(4) Any *Net due from* head office, branches, subsidiaries and other offices outside the Philippines, excluding accumulated net earnings, shall be a deductible adjustment to capital.

(5) For purposes of compliance with the Single Borrower's Limit, the capital of a foreign bank branch, subject to prescribed adjustments, shall be synonymous to its "net worth".

*Transitory provision.*

a. *Minimum capital of foreign banks.*

Minimum capital of foreign banks established in the Philippines prior to R.A. No. 10641 shall comply with the applicable minimum capital level requirement as prescribed under Subsec. X111.1. Existing foreign banks that do not meet the minimum capital requirements shall submit an acceptable capital build-up program as required under Subsec. X111.1.

b. *Single Borrower's Limit (SBL).*

i. Loans and credit commitments of foreign bank branches as of the effectivity of R.A. No. 10641 may be maintained, but once repaid or expired, shall no longer be increased in excess of the ceiling allowed under this Circular.

ii. Existing foreign bank branches shall be given until 31 December 2019 to use twice the level of capital as defined in this Subsection as net worth, as reference point for purposes of determining the appropriate SBL."

**"§X105.6 (2008 - X121.6) Risk-based capital for foreign bank branch**

(1) Foreign bank branches shall comply with the same risk-based capital adequacy ratios applicable to domestic banks of the same category.

(2) In computing the risk-based capital adequacy ratios, Common Equity Tier 1 (CET1) capital shall include permanently assigned capital, undivided profits, accumulated net earnings and other capital components.

(3) Any *Net due from* head office, branches, subsidiaries and other offices outside the Philippines, excluding accumulated net earnings shall be deducted from CET1 capital.

(4) The guidelines for computing the risk-based capital adequacy ratios are provided in *Appendix 63b.*"

**"§ X105.7 (2008 - X121.7) Head Office guarantee.**

x x x"

**"§ X105.8 (2008 - X121.8) Scope of authority for locally incorporated subsidiaries of foreign banks as well as branches with full banking authority.** Subsidiaries and branches of foreign banks established under Subsec. X105.1 shall be allowed to perform the same functions and enjoy the same privileges of, and be subject to the same limitations imposed upon, a Philippine bank of the same category. Privileges shall include the eligibility to operate under a universal banking authority subject to compliance with existing rules and regulations and the guidelines enumerated in *Appendix 3.*"

**"§ X105.9 (2008 - X121.9) Control of the resources of the banking system.**

The Monetary Board shall adopt such measures as may be necessary to ensure that at all times the control of sixty percent (60%) of the resources or assets of the entire banking system is held by domestic banks, which are majority-owned by Filipinos. Said measures may include –

- (i) Suspension of entry of additional foreign bank subsidiaries and branches; and
- (ii) Suspension of license upgrade or conversion to subsidiary of existing foreign bank branches.

Other measures may also be considered, provided that such measures so adopted shall be consistent with R.A. No. 7721, as amended by R.A. No. 10641, and shall consider vested rights and the non-impairment of contracts."

**"§ X105.10 (2008 - X121.10) Change from one mode of entry to another**

Foreign banks which are operating in the Philippines may apply for conversion of their mode of entry.

The bank shall comply with all applicable requirements and submit an acceptable transition plan which shall address how the foreign bank shall implement the change in mode of entry."

**"§ X105.12 (2008-X121.12) Equal Treatment**

Any right, privilege or incentive granted to foreign banks or their subsidiaries or affiliates under R.A. No. 7721, as amended by R.A. No. 10641 shall be equally enjoyed by, and extended under the same conditions, to domestic banks."

**Section 2.** Subsection X126.1 of the MORB on the limits of stockholdings in a single bank is hereby amended to read, as follows:

**“§ X126.1 Limits of stockholdings in a single bank.** The stockholdings of an individual, corporation, family group, or same group of persons in any bank shall be subject to the limits prescribed in Sections 11, 12, and 13 of R.A. No. 8791, R.A. No. 7906, R.A. No. 7353, as amended by R.A. No. 10574, R.A. No. 7721, as amended by R.A. No. 10641, and other relevant laws as summarized in the table below:

Particulars	Ceiling
(a) Voting shares of stock of a foreign individual or a foreign non-bank corporation in: i. UB/KB and TB ii. RB	40% 60%
(b) Aggregate ownership of the voting shares of stock of foreign individuals and/or foreign non-bank corporations in: i. UB/KB ii. TB/RB	40% 60%
(c) Voting shares of stock of a qualified foreign bank in UB, KB, TB and RB	100%
(d) Combined ownership of the voting shares of stock of qualified foreign banks in UB, KB, TB and RB	100%
(e) Voting shares of stock of a Filipino individual or a Philippine non-bank corporation in: i. UB/KB and TB ii. RB  Voting shares of stock of a qualified Philippine corporation in UB, KB, TB and RB prior to the effectivity of R.A. No. 10641 (7 August 2014)	40% 60%  60%
(f) Combined ownership of an individual and corporation/s which is/are wholly-owned or a majority of the voting shares of stock of which is owned by such individual in: i. UB/KB/TB ii. RB	40% 60%

“a. Any foreign individual or non-bank corporation may each own or control up to forty percent (40%) only of the voting stock of a UB, KB or TB: *Provided*, That the aggregate foreign-owned voting stock owned by foreign individuals and non-bank corporations shall not exceed forty percent (40%) of the voting stock of the UB/KB, and sixty percent (60%) in the case of TBs.

For RBs, non-Filipino citizens, excluding foreign banks, may each or in the aggregate, own, acquire or purchase, up to sixty percent (60%) of the voting stock in an RB.

The percentage of foreign-owned voting stock in a bank shall be determined by the citizenship of the individual or corporate stockholders in that bank.

“b. Qualified foreign banks may own or control up to one hundred percent (100%) of the voting stock of a domestic bank.

“c. Any Filipino individual or a domestic non-bank corporation may each own up to forty percent (40%) only of the voting stock of a UB, KB or TB, and up to sixty percent (60%) only of the voting stock of a rural bank.

"d. x x x

"e. *Stockholdings of family groups or related interests.* Individuals related to each other within the fourth degree of consanguinity or affinity, whether legitimate, illegitimate or common-law, shall be considered family groups or related interests and may each own up to forty percent (40%) of the voting stock of a UB, KB or TB and up to sixty percent (60%) of the voting stock of a RB: *Provided*, That said relationship must be fully disclosed in all transactions by such individuals or family groups or related interests.

"f. Two (2) or more corporations owned or controlled by the same family group or same group of persons shall be considered related interests but may each own up to forty percent (40%) of the voting stock of a UB, KB or TB and up to sixty percent (60%) of the voting stock of a RB: x x x

"g. *Ceiling on stockholdings in a Coop Bank.* x x x

"h. *Determination of foreign-owned voting stock and citizenship of corporate stockholders in a bank as well as the relationship of stockholders of a bank.*

"x x x"

**Section 3.** Subsection X126.2 of the MORB on transactions involving voting shares of stocks is hereby amended to read, as follows:

**"§ X126.2 *Transactions involving voting shares of stocks.*** The following regulations shall govern all transactions involving voting shares of stocks in banks.

"x x x

a. *Unlawful and void transactions involving voting shares of stock of banks.* The following transactions, to the extent of the excess over any of the prescribed ceilings under R.A. No. 8791, R.A. No. 7906, R.A. No. 7353 (as amended by R.A. No. 10574), R.A. No. 7721 (as amended by R.A. No. 10641) and other relevant laws are hereby declared unlawful and void:

"(1) Any transaction involving voting shares of stock of a bank, if such transaction, in itself, or in relation with other/previous transaction/s shall result in the ownership and control by an individual or corporation of voting shares of stock in excess of any of the prescribed limits of stockholdings in a bank.

"(2) Any act, contract, agreement or arrangement, such as voting trust agreement or proxy, which vests in any person, whether natural or juridical, the right to vote or the control of the voting shares of stock of a bank, if such arrangement in itself, or in relation with other/previous transaction/s, shall result in the acquisition of the right to vote or the control of voting shares of stock of the bank, in excess of the prescribed ceilings.

"x x x"

**Section 4.** Subsection 3127.5 of the MORB on the guidelines for selection is hereby amended to read, as follows:

**“§3127.5 Guidelines for selection.** In determining the fitness and propriety of the non-Filipino citizen, excluding foreign banks, that will be allowed to invest in the voting stock of an RB, the criteria, such as but not limited to the following, shall be considered:

“x x x

A foreign bank seeking to own, acquire or purchase up to one hundred percent (100%) of the voting stock in an RB shall meet the qualification requirements and selection criteria under Subsecs. X105.2 and X105.3, respectively.”

**Section 5.** Section X153 and its subsections of the MORB on the establishment of sub-branches of foreign bank branches is hereby amended to read, as follows:

**“Sec. X153 Establishment of Sub-Branches of Foreign Bank Branches.** Authority to establish sub-branches of foreign banks may be granted subject to Monetary Board approval. The following guidelines shall govern the establishment of sub-branches of foreign banks in the Philippines pursuant to R.A. No. 7721, as amended by R.A. No. 10641.”

**“§ X153.1 Application for authority to establish sub-branches.** An application for authority to establish sub-branches shall be signed by the Country Manager or the highest ranking officer in the Philippines of the applicant foreign bank, and shall be accompanied by the following information/documents:

- a. Certified true copy of the resolution of the foreign bank’s board of directors authorizing the foreign bank’s Country Manager or highest ranking officer in the Philippines to apply for authority to establish sub-branch/es and represent the bank in connection therewith; and
- b. Proposed business plan for the sub-branch/es.”

**“§ X153.2 Requirements for establishment of sub-branches.** In addition to the standard pre-qualification requirements for the grant of banking authorities in *Appendix 5*, the applicant foreign bank shall be subject to the branch processing fee provided in Subsec. X151.5; *Provided*, that sub-branch applications in the cities of Makati, Mandaluyong, Manila, Paranaque, Pasay, Pasig, Quezon and San Juan in Metro Manila shall also be subject to the special licensing fee under Subsec. X151.5, as applicable.”

**“§ X153.3 Date of opening.** The opening of approved sub-branches shall be subject to the provisions of Subsec. X151.7.”

**“§ X153.4 Requirements for opening a sub-branch.** After a foreign bank’s application to establish a sub-branch has been approved, it may open the same subject to the following conditions:

- a. Submission by the applicant foreign bank of a written notice at least thirty (30) days prior to the intended date of opening, accompanied by the following:

(1) Proof or evidence of inward remittance needed to meet the additional capital requirements under Subsec. X111.1, as applicable;

(2) List of principal and junior officers of the proposed sub-branch/es and their respective designations and salaries;

(3) x x x

(4) x x x

b. The foreign bank sub-branch has adequate staff, equipment, and other facilities to meet the needs of its commercial banking operations: *Provided*, That the bank's premises, vault and office equipment, after inspection by the representatives of the SES shall have been found to be substantially in compliance with specifications on security standards and ready for use by the bank; and

c. Issuance by the Governor of the permit to open and operate the approved sub-branch/es.

Banks shall submit a written notice to the appropriate department of the SES of the actual date of opening of sub-branches not later than ten (10) banking days from such opening."

**"§ X153.5 Limitations on establishment of sub-branches**

A foreign bank authorized to establish branches in the Philippines pursuant to the provisions of R.A. No. 7721, as amended by R.A. No. 10641, may open up to five (5) sub-branches as may be approved by the Monetary Board."

**"§ X153.6 Sanctions.**

x x x."

**Section 6.** Subsection X311.4 of the MORB shall now read, as follows:

**"§ X311.4 Participation in foreclosure proceedings.**

Foreign banks which are authorized to do banking business in the Philippines through any of the modes of entry under Subsec. X105.1 shall be allowed to bid and take part in foreclosure sales of real property mortgaged to them, as well as to avail of enforcement and other proceedings, and accordingly take possession of the mortgaged property, for a period not exceeding five (5) years from actual possession which excludes the redemption period, as defined under Subsec. X311.5, unless actual possession was acquired earlier: *Provided*, That in no event shall title to the property be transferred to such foreign bank.

In case said bank is the winning bidder, it shall, during the said five (5)-year period, transfer its rights to a qualified Philippine national, without prejudice to a borrower's rights under applicable laws. Should the bank fail to transfer such property within the five (5)-year period, it shall be penalized one half (1/2) of one percent (1%) per annum of the price at which the property was foreclosed until it is able to transfer the property to a qualified Philippine national.

To enable the Bangko Sentral to determine compliance with the foregoing, the foreign bank shall maintain, and make readily available for inspection, information pertaining to individual mortgaged properties foreclosed.

This provision does not limit the right of the mortgagee-bank to own condominium units as provided under existing laws."

**Section 7.** Subsection 3311.4 of the MORB on the foreclosure by rural/cooperative banks is hereby amended to read, as follows:

**"§ 3311.4 Foreclosure by rural/cooperative banks.** The foreclosure of mortgages covering loans granted by RBs and executions of judgment thereon involving real properties levied upon by a sheriff shall be exempt from the publications in newspapers now required by law where the total amount of loan, excluding interests due and unpaid, does not exceed P100,000 or such amount as the Monetary Board may prescribe as may be warranted by prevailing economic conditions. It shall be sufficient publication in such cases if the notices of foreclosure and execution of judgment are posted in the most conspicuous area of the municipal building, the municipal public market, the RB, the barangay hall, and the barangay public market, if any, where the land mortgaged is situated during the period of sixty (60) days immediately preceding the public auction of execution of judgment.

"x x x

RBs which are not qualified to acquire or hold land in the Philippines pursuant to existing laws shall be allowed to bid and take part in foreclosure sales of real property mortgaged to them, as well as to avail of enforcement and other proceedings, and accordingly to take possession of the mortgaged property, for a period not exceeding five (5) years from actual possession which excludes the redemption period, as defined under Subsec. X311.5, unless actual possession was acquired earlier: *Provided*, That in no event shall title to the property be transferred to such RB.

In case the RB, which is not qualified to acquire or hold land in the Philippines, is the winning bidder, it shall, during the said five (5) year period, transfer its rights to a qualified Philippine national as defined under existing laws without prejudice to a borrower's right under applicable laws. Should said unqualified RB fail to transfer such property within the five (5) year period, it shall be penalized at one-half (1/2) of one percent (1%) *per annum* of the price at which the property was foreclosed until the property is transferred to a qualified Philippine national.

"x x x"

**Section 8.** Subsection X342.1 of the MORB on definition of terms is hereby amended to read, as follows:

**"§ X342.1 Definition of terms.** For purposes of this Section, the following definitions shall apply:

"a. *Lending institutions* shall refer to all banks, namely: UBs, KBs, TBs and RBs/Coop Banks, including government-owned banks.

"b. *Total loan portfolio* shall include all loans and receivables, other than those booked in the FCDU/EFCDU as defined in the Manual of Accounts Section of the FRP under Subsec. X191.2 (gross of allowance for credit losses) excluding the following:

"x x x

"(4) Loans granted to MSMEs, other than to BMBEs, to the extent funded by wholesale lending of, or rediscounted with, another bank;

"(5) Agrarian reform credits/other agricultural loans granted under R.A. No. 10000, other than those eligible for compliance with the mandatory allocation of credit for MSMEs; and

"(6) Loans and receivables arising from repo agreements, certificates of assignment/participation with recourse and securities lending and borrowing transactions.

"x x x"

**Section 9.** Section X378 of the MORB on limits on investment in the equities of financial allied undertakings is hereby amended to read, as follows:

**"Sec. X378 Limits on Investment in the Equities of Financial Allied Undertakings.** The equity investment of a bank in a single financial allied undertaking shall be within the following ratios in relation to the total subscribed capital stock and to the total voting stock of the allied undertaking:

"x x x

"A publicly-listed UB or KB may own up to 100% of the voting stock of only one (1) other UB or KB. Otherwise, it shall be limited to a minority holding.

"The guidelines in determining compliance with ceilings on equity investments in financial allied undertakings are shown in *Appendix 79.*"

**Section 10.** Appendix 2 of the MORB on the prescribed application forms for the entry of foreign banks is hereby amended to rationalize and simplify the documentary requirements for foreign bank applicants under each mode of entry. (Annex A)

**Section 11.** Appendix 3 of the MORB on the guidelines for the issuance of a universal banking authority for branches of foreign banks is hereby amended to read, as follows:

## **"I. QUALIFICATION AND DOCUMENTATION REQUIREMENTS**

**"A. Minimum Capital Required.** The capital, as defined under prevailing rules and regulations, of a foreign bank branch applying for a universal banking (UB) authority shall be equivalent to at least the amount prescribed by the Monetary Board for UBs.

**B. Financial Resources, Past Performance and General Compliance with Banking Laws and Regulations.** Applicant bank shall comply with capital adequacy ratios (Common Equity Tier 1, Tier 1, Capital Adequacy Ratio, and Capital Conservation Buffer) under Section 34 of R.A. No. 8791, Subsec. X105.6 and Appendix 63b, for the year preceding the filing of application. It shall have sufficient valuation reserves to cover estimated losses.

"x x x"

**Section 12.** Part II. Qualifying Capital of Appendix 63b/Q-46 of the MORB/Manual of Regulations for Non-Bank Financial Institutions (MORNBFI) on the risk-based capital adequacy framework for the Philippine banking system is hereby amended to read, as follows:

"Part II. Qualifying Capital

"x x x

**"Section A. Domestic Banks and Subsidiaries of Foreign Banks**

"x x x

**"Section B. Branches of Foreign Banks**

**"CET1 capital**

"10. CET1 Capital shall be comprised of:

- a. Permanently assigned capital<sup>1</sup>;
- b. Undivided profits;
- c. Retained earnings;
- d. Accumulated net earnings<sup>2</sup>; and
- e. Other comprehensive income
  - (1) Net unrealized gains or losses on available for sale (AFS) securities<sup>3</sup>;
  - (2) Cumulative foreign currency translation; and
  - (3) Others.

**"Regulatory adjustments to CET1 capital**

"11. The regulatory adjustments to CET1 capital are provided in paragraph 4, as applicable.

In addition, any balance in the *Net due from account*<sup>4</sup> shall be deducted from CET1 capital.

**"Additional Tier 1 (AT1) capital**

**"Tier 2 Capital**

"12. Tier 2 capital shall consist of general loan loss provision, limited to a maximum of one percent (1.00%) of credit risk-weighted assets, and any amount in excess thereof shall be deducted from the credit risk-weighted assets in computing the denominator of the risk-based capital ratio.

"x x x"

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<sup>1</sup> xxx

<sup>2</sup> Pertains to the unremitted profits not yet cleared by the Bangko Sentral for outward remittance, net of losses in operation of Philippine branch of foreign banks.

<sup>3</sup> xxx

<sup>4</sup> The balance of *Net Due from* account shall exclude accumulated earnings/losses that were included as part of CET 1 capital."

**Section 13.** Subsections X105.5 (Prescribed ratio of "Net Due to" account), and X105.11 (Listing of shares with the Philippine Stock Exchange) of the MORB are hereby deleted.

This Circular shall take effect fifteen (15) days after its publication in a newspaper of general circulation.

**FOR THE MONETARY BOARD:**



**AMANDO M. TETANGCO, JR.**  
Governor

21 November 2014

**Annex A of Circular  
Appendix 2**

**APPLICATION REQUIREMENTS FOR THE ENTRY OF FOREIGN BANKS  
(Appendix to Subsections X105.1 and X105.2)**

The information contained in the application to be filed by foreign banks, who are interested to operate in the Philippines through any of the modes of entry, shall cover the criteria enumerated in the table below. Supporting documents attached to the application shall include but are not limited to the items enumerated below:

Entry Criteria	Acquisition of Existing Domestic Bank	Establishment of New Domestic Subsidiary	Establishment of branch with full banking authority
<p>A. Contribution to the Philippine economy</p> <p><i>The applicant should describe the bank and its Home Country's current and expected contributions to the Philippine economy especially in terms of foreign direct investments and trade.</i></p>	✓	✓	✓
<p>B. Contribution to the local banking industry, including undertaking to share banking technology</p> <p><i>The applicant should describe how it can contribute positively to the improvement of the Philippine financial system.</i></p>	✓	✓	✓
<p>C. Corporate Plan</p> <p><i>The applicant should describe in meaningful details its business model and corporate strategy which should be consistent with the policy objectives of R.A. No. 7721, as amended by R.A. No. 10641, and supportive of Philippine economic policy.</i></p>	✓	✓	✓

Entry Criteria	Acquisition of Existing Domestic Bank	Establishment of New Domestic Subsidiary	Establishment of branch with full banking authority
1. Business Model 2. Corporate Strategy 3. Financial Projections (including underlying assumptions)	✓	✓	✓
D. Financial Capability and Ownership Structure  <i>The applicant should demonstrate that it is financially sound and capable of conducting business in the Philippines in a safe and sound manner.</i>  <i>It should describe its ownership and control structure in adequate detail, including whether it is a part of a financial or commercial conglomerate, and disclosing related parties, if any, that are operating in the Philippines.</i>			
<i>The following documents should be presented:</i> 1. Latest Annual Report; 2. Basic corporate background: <ol style="list-style-type: none"> <li>i. Date and place of incorporation;</li> <li>ii. Number of branches and agencies in the home country;</li> <li>iii. List of foreign branches, agencies, other offices, parent (if any), subsidiaries and affiliates, and their location and line of business (if different from banking); and</li> <li>iv. Range of banking services offered.</li> </ol> 3. Articles of Incorporation and By-laws; 4. Major stockholders and their corresponding percentage of ownership; 5. List of directors and principal officers as well as their respective citizenship; 6. Latest Audited financial statements; and 7. Proof of financial capacity and fitness of other investors in the bank such as audited financial statements and business references.	✓	✓	x
E. Head Office Guarantee (with sample guarantee)	x	x	✓

Entry Criteria	Acquisition of Existing Domestic Bank	Establishment of New Domestic Subsidiary	Establishment of branch with full banking authority
F. Certification from the foreign bank applicant's home country supervisory authority that: <ol style="list-style-type: none"> <li>1. It has no objection to the foreign bank's investment;</li> <li>2. It will provide the Bangko Sentral ng Pilipinas with relevant supervisory information, including derogatory information, related to the applicant bank, to the extent allowed under existing laws;</li> <li>3. The foreign bank applicant is compliant with the capital requirements as prescribed by the laws and regulations of its country of origin; and</li> <li>4. Philippine banks may establish subsidiaries and/or branches in the foreign bank applicant's home country, subject to compliance with the host country's rules and regulations governing admission generally applicable to all foreign banks.</li> </ol>	✓	✓	✓
G. Transition Plan (for existing foreign banks opting to change their original mode of entry)	✓	✓	✓
H. Divestment Plan for the disposal of title/interest in all land properties held by the acquired domestic bank within a 5-year period reckoned from the date of Monetary Board approval of the foreign bank entry <sup>1</sup>	✓	x	x
I. Other Documentation Requirements			
1. Agreement between investor and investee domestic bank/Agreement to organize a bank (with sample)	✓	✓	x
2. Board Resolution authorizing the foreign bank applicant to (i) invest in a domestic bank/establish a subsidiary/branch; and (ii) designate person/s who will represent the foreign bank, duly authenticated by the Philippine Consulate	✓	✓	✓
3. Certification from the foreign bank applicant's Corporate Secretary or any officer holding equivalent position containing the information that the bank is widely-owned and publicly-listed, duly authenticated by the Philippine Consulate	✓	✓	✓
4. Certification by the responsible officer of the Home Country Stock Exchange that the foreign bank applicant is listed therein, duly authenticated by the Philippine Consulate	✓	✓	✓

<sup>1</sup> Also applicable for change in mode of entry (i.e., from subsidiary to branch)

Entry Criteria	Acquisition of Existing Domestic Bank	Establishment of New Domestic Subsidiary	Establishment of branch with full banking authority
5. Names of proposed principal officers with designation and duties	✓	✓	✓
6. Authority to obtain information from other relevant regulatory authorities	✓	✓	✓
7. Payment of application fee (non-refundable) of P500,000 upon filing of application <sup>2,3</sup>	✓	✓	✓
8. Payment of franchise fee of P25 million upon approval of application <sup>2</sup>	✓	✓	✓

<sup>2</sup> Also applicable for conversion of mode of entry

<sup>3</sup> Creditable to the franchise fee

## Sample Guarantee Undertaking to Establish Branches of Foreign Banks

### GUARANTEE

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, under the provisions of Republic Acts No. 8791 ("The General Banking Law of 2000") and No. 7721 ("An Act Liberalizing the Entry and Scope of Operations of Foreign Banks in the Philippines and for Other Purposes"), as amended by R.A. No. 10641, of the Republic of the Philippines, the licensing, supervision and regulation of banks, both foreign and domestic, are vested with the Bangko Sentral ng Pilipinas;

WHEREAS, under said Republic Act No. 7721, as amended by R.A. No. 10641, {Name of Bank} (hereinafter called Guarantor) has been authorized to operate a branch or branches in the Philippines.

WHEREAS, under the provisions of Republic Act No. 7721, as amended by R.A. No. 10641, banks organized under laws other than those of the Republic of the Philippines shall guarantee the full payment of all liabilities of its branch or branches in the Philippines for the purpose of providing effective protection and security to the interests of the depositors and other creditors of said branch or branches; and

WHEREAS, Guarantor is willing, desirous and ready at any time to give such full guarantee as well as to comply with whatever conditions required in said Republic Act No. 7721, as amended by R.A. No. 10641.

NOW, THEREFORE, for the purpose above mentioned, Guarantor hereby agrees that in the event any branch of Guarantor located in the territory of the Republic of the Philippines should fail to promptly pay any lawful debt, claim or liability of any kind or character, due and payable under the laws of the Republic of the Philippines and pursuant to the terms of said debt, claim or liability, then Guarantor upon the demand of the Bangko Sentral shall promptly pay said debt, claim or liability to the person or persons entitled thereto under the laws of the Republic of the Philippines. Any such debt, claim or liability, not so promptly paid, shall bear interest at a rate per annum as may be prescribed by the Monetary Board. Said debts, claims or liabilities, interest thereon and any cost or expenses incidental to the collection thereof, shall be paid in the currency in which the obligations are expressed, or in which the costs or expenses were incurred. The obligation of Guarantor upon default of any of its branches located in the territory of the Republic of the Philippines is primary, direct and immediate and not contingent on any remedy or recourse upon any asset, property or right which its branch or branches within the territory of the Republic of the Philippines may have, in such a way that any depositor or creditor of its branch or branches in the Philippines may take, at any time, any action on this Guaranty whether or not said depositor or creditor has simultaneously taken or will thereafter take, any direct or indirect action under the laws of the Philippines against said branch or branches, or against any assets, property or rights thereof: *Provided, however,* That Guarantor shall have the right to set-off should it have any claim or claims against any depositor or creditor taking any action by virtue of the provisions of its Guarantee.

The right on this Guarantee is independent of and separate from whatever right, security or action which any depositor or creditor of said branch or branches in the Philippines may have, take or pursue to protect his interest, and whatever action or measure the Bangko Sentral ng Pilipinas may adopt in the exercise of its supervisory and regulatory powers allowed and provided for in said Republic Acts No. 8791 and No. 7721, as amended by R.A. No. 10641, of the Republic of the Philippines, such as requiring Guarantor to assign to its Philippine Branch or Branches an amount of capital sufficient to meet the minimum capital required in said Republic Act No. 7721, as amended by R.A. No. 10641, or any measure it may be authorized to take under the provisions of said Republic Act No. 8791, in the case of capital deficiencies; in such case or cases, the liability created hereunder shall not in the least be minimized or affected, it being the purpose of this undertaking that Guarantor shall at all times be responsible and obligated for any such obligations or liabilities of its branch or branches in the Philippines, and to the extent that the same has been fully paid or satisfied only will said Guarantor be relieved from its primary obligations hereunder.

No technicality in the law or in the language of this Guarantee or in any contract, agreement or security, held by or with said branch or branches in the Philippines, shall defeat the nature and purpose of this Guarantee as a primary and direct obligation of Guarantor to the end that the interest of the depositors and creditors of the said branch or branches in the Philippines may be fully protected and satisfied in accordance with Section 5 of Republic Act No. 7721, as amended by R.A. No. 10641. Guarantor hereby acknowledges having full knowledge of said Republic Act No. 7721, as amended by R.A. No. 10641, in accordance with which this primary and principal obligation is given. Guarantor hereby recognizes the jurisdiction of Philippine courts and hereby authorizes its branch office and/or offices in the Philippines to accept summons, processes and notices from the Philippine courts.

The Guarantee shall be governed by Philippine law.

IN WITNESS WHEREOF, this Guarantee has been executed by Guarantor acting by and through its Officers thereunto duly authorized this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**Sample Agreement to Organize a Subsidiary Bank**

**AGREEMENT TO ORGANIZE A \_\_\_\_\_ (Specify type of Bank) BANK**

An agreement, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and among the following:

<u>Name</u>	<u>Residence</u>	<u>Citizenship</u>
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Whereas, the parties hereto are desirous of forming a corporation under the following terms:

1. That a corporation to be known as \_\_\_\_\_ shall forthwith be formed for the purpose of carrying on the business of a \_\_\_\_\_ bank as provided for by law;

2. That the place where the principal office of the corporation is to be established or located is in \_\_\_\_\_;

3. That the number of directors of the said corporation shall be \_\_\_\_\_ and that the names, residences and citizenship of the proposed directors of the corporation are, as follows:

<u>Name</u>	<u>Residence</u>	<u>Citizenship</u>
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4. That the capital stock of said corporation is \_\_\_\_\_ pesos (\_\_\_\_\_) Philippine Currency, and said capital shall be divided into (number) preferred shares with a par value of \_\_\_\_\_ each share:

(If there are preferred shares, their preferences should be described.)

5. That the amount of said capital stock which is proposed to be subscribed initially by the stockholders is \_\_\_\_\_ pesos (P \_\_\_\_\_) and the amount proposed to be paid thereof upon organization is \_\_\_\_\_ pesos (P \_\_\_\_\_), as follows:

<u>Name</u>	<u>Residence</u>	<u>Citizenship</u>	<u>Amount to be</u>
			<u>Subscribed</u> <u>Paid-In</u>

Total \_\_\_\_\_

6. That \_\_\_\_\_, one of the organizers, is hereby authorized to sign the application to the Bangko Sentral ng Pilipinas for the issuance of the certificate of authority to establish a \_\_\_\_\_ bank.

IN WITNESS WHEREOF, we have hereunto set our hands this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ in the \_\_\_\_\_, Philippines.

**SIGNATURES**

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

**SIGNED IN THE PRESENCE OF:**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

**NOTARIAL ACKNOWLEDGMENT**